

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(218)

RSA-3441-2016

Date of Decision : April 05, 2024

Om Parkash

.. Appellant

Versus

Secretary, Haryana Vidyut Prasaran and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Parminder Singh, Advocate, for the appellant.

Mr. Baldev Raj Mahajan, Sr. Advocate, with
Ms. Prerna Malhotra, Advocate, for the respondents.**HARSIMRAN SINGH SETHI J. (ORAL)**

1. In the present appeal, the challenge is to the judgment and decree of the trial Court dated 18.04.2014 by which, the suit filed by the appellant-plaintiff was partly allowed and the appeal filed by the appellant-plaintiff has been dismissed by the lower Appellate Court vide judgment and decree dated 04.03.2016. Hence the present Regular Second Appeal.

2. Learned counsel for the appellant-plaintiff argues that the Courts below have not considered all the facts and evidence in the correct perspective and the judgments of the Courts below are liable to be set aside by which suit filed by the appellant-plaintiff has only partly allowed.

3. Learned counsel for the appellant-plaintiff submits that keeping in view the policy of the respondent-State, an employee was entitled for three ACPs on completion of 10, 20 and 30 years of service and keeping in view the fact the appellant-plaintiff was working on the post of Assistant Lineman with the respondents since 18.04.1973 and upto the year 2007, when the appellant-plaintiff attained the age of superannuation, he had

completed 30 years of service hence, the benefit of 3rd ACP should have been extended to the appellant-plaintiff from the year 2003, which benefit has wrongly been denied to him by the Courts below and that too without considering the said fact.

4. Learned senior counsel appearing on behalf of the respondent-Nigam submits that the appellant-plaintiff has not completed 30 years of service upto the date of his retirement in the year 2007 for the grant of benefit of 3rd ACP for the reason that though the appellant-plaintiff was initially appointed as ALM on 18.04.1973 on adh oc basis, his services were only regularized on the said post on 02.04.1979 and any service rendered prior to the said date, cannot be taken into account for the grant of benefit of ACP and the judgment and decree of the Courts below are perfectly valid and legal.

5. I have heard learned counsel for the parties and have gone through the record with their able assistance.

6. It is a matter of fact that the appellant-plaintiff was appointed on the post of Assistant Lineman in the year 1973 on adhoc basis. His services were only regularized in the year 1979. The claim of the appellant-plaintiff in the civil suit is for the grant of 3rd ACP on completion of 30 years of service. It is also a matter of fact that the appellant-plaintiff attained the age of superannuation and retired in February 2007.

7. The only question that arises is whether, the adhoc service rendered by the appellant-plaintiff from 1973 to 1979 can be taken into account for the grant of benefit of 3rd ACP or the computation of service is to start from the date the employee was appointed on regular basis.

8. The said question of law has already been settled by the Hon'ble Supreme Court of India that the adhoc service cannot be taken into

account for the grant of ACP and only the regular service is to be taken into account. While passing order in ***Civil Appeal No.13423 of 1996 titled as State of Haryana vs. Haryana Veterinary and A.H.T.S. Association, decided on 19.09.2000***, the Hon'ble Supreme Court of India held that only the regular service of an employee is to be taken into account for computing the grant of ACP and adhoc service is to be excluded. The relevant paragraph of the said judgment is as under:-

“Rule 11 provides for continuation on probation for a period of 2 years and Rule 12 is the Rule for seniority. A combined reading of the aforesaid provisions of the Recruitment Rules puts the controversy beyond any doubt and the only conclusion which could be drawn from the aforesaid Rules is that the services rendered either on ad hoc basis or as a stopgap arrangement, as in the case in hand from 1980 to 1982 cannot be held to be regular service for getting the benefits of the revised scale of pay or of the selection grade under the Government Memorandum dated 2nd June, 1989 and 16th May, 1990, and therefore, the majority judgment of the High Court must be held to be contrary to the aforesaid provisions of the Recruitment Rules, consequently cannot be sustained. The initial letter of appointment dated 6.12.1979 pursuant: to which respondent Rakesh Kumar joined as an Assistant Engineer on ad hoc basis in 1980 was also placed before us. The said appointment letter unequivocally indicates that the offer of appointment as Assistant Engineer was on ad hoc basis and Clauses 1 to 4 of the said letter further provides that the appointment will be on ad hoc basis for a period of 6 months from the date of joining and the salary was a fixed salary of Rs. 400 p.m. in the scale of Rs. 400 to Rs. 1100 and the services were liable to be terminated without any notice and at any time without assigning any reason and that the appointment will not enable the appointee any seniority or any other benefit under the Service Rules for the time being in

force and will not count towards increment in the time scale. In view of the aforesaid stipulations in the offer of appointment itself we really fail to understand as to how the aforesaid period of service rendered on ad hoc basis can be held to be service on regular basis. The conclusion of the High Court is contrary to the very terms and conditions stipulated in the offer of appointment and, therefore, the same cannot be sustained. The regular letter of appointment dated 29.1.1982 in favour of Rakesh Kumar was also produced before us and that letter indicates that the respondent Rakesh Kumar alongwith others had applied to the Secretary, Haryana Public Service Commission for being appointed as an Assistant Engineer and the Service Commission after selecting the number of persons prepared a list and appointment letters were issued by the Government from the said list on the basis of the merit position of different candidates. Thus the appointment of respondent Rakesh Kumar was a fresh appointment in accordance with the Statutory Rules after the Public Service Commission adjudged their suitability and the regular service of the respondent Rakesh Kumar must be counted from the date he joins the post pursuant to the offer of appointment dated 29.1.1982 and the prior service rendered by him on ad hoc basis cannot be held to be regular service nor can it be tagged on to the later service for earning the benefit under the Government Circular dated 2nd June, 1989 as well as the Clarificatory Circular dated 16th May, 1990. The conclusion of the majority judgment of the High Court, therefore, is wholly erroneous and cannot be sustained.”

9. In case, the adhoc service of the appellant-plaintiff from 1973 to 1979 is excluded from computing the 30 years of service, then the appellant-plaintiff, whose services were only regularized in the year 1979, does not complete 30 years of service as on February 2007 when he retired from service. That being so, the claim that the appellant-plaintiff is entitled for 3rd ACP on completion of 30 years of service as in the year 2003, cannot

be accepted and has rightly been decided by the Courts below. Even otherwise, no perversity in the judgments of the Courts below has been pointed out and learned counsel for the appellant tried to re-argue the case on merit to convince this Court to arrive at another decision than this Court arrived at by the Courts below, which is not permissible.

- 10. No other argument was raised.
- 11. Keeping in view the above, no ground is made out for any interference by this Court in the present regular second appeal.
- 12. Dismissed.

April 05, 2024
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No